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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

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Amendment of Part 20 and 24 of the)
Commission Rules — Broadband)
PCS Competitive Bidding and the)
Commercial Mobile Radio Service)
Spectrum Cap)

WT Docket No. 96-59

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Amendment of the Commission's)
Cellular PCS Cross-Ownership Rule)

GN Docket No. 90-314

U S WEST REPLY COMMENTS

U S WEST, Inc. addresses the following three subjects in this reply: (a) scheduling of the remaining broadband PCS auctions; (b) extending installment payments and/or bidding credits to only some bidders in the D and E block auction; and (c) additional steps the Commission can take to promote small business entry into the CMRS market.¹

I. There Is Industry Consensus that the D, E, and F Block Auctions Should Commence as Quickly as Possible

There is only one issue, of the many raised in the Notice, on which it can be said that there is industry consensus — namely, that “it is critical that the licenses for the re-

¹ U S WEST also supports the majority view that the FCC should replace the current multiplicity of attribution standards, including the 20% cellular attribution rule, with one simple control test. *See, e.g., ALL-TEL at 8; AT&T at 10-11; BellSouth at 11-12; GTE at 10-13; Western Wireless at 20-24. See also Cincinnati Bell at 4-5; CTIA at 11-15.* Control should be defined as affirmative or negative control, and the same control standard should be used uniformly with all interests, including general partnership interests. *See, e.g., BellSouth at 12.*

maining blocks of PCS spectrum be awarded as promptly as possible.”² This view is shared by incumbent cellular carriers, A and B block PCS licensees, participants in the C block auction, and firms intending to bid in the remaining D, E, and F block auctions.³

The Commission, North Coast has observed, “must move swiftly” in auctioning the remaining PCS blocks “if future 10 MHz licensees are to have any reasonable chance to compete with incumbent CMRS licensees, and with the A, B and C block licensees.”⁴ And as AirLink has aptly stated, “[i]n the race to provide wireless services, time is a direct competitive advantage” :

[E]very day of delay in the auction will cost [the remaining PCS] licensees money and possibly marketshare.⁵

Delays in licensing can have enormous ramifications in all facets of one’s business. Among other things delays can “hurt winners with their ability to obtain equipment in a timely fashion.”⁶

Given all these considerations, coupled with the statutory mandate that new radio services be deployed “rapid[ly] . . . without administrative or judicial delays,”⁷ the

² Spectrum Resources at 2.

³ See, e.g., GTE at 2-3; Gulfstream at 5; North Coast at 3-4; PCIA at 4; Phoenix at 4; Roseville at 2; and U.S. Intelco at 2.

⁴ North Coast at 3-4. See also PCIA at 4 (“Bringing the D, E, and F Block PCS auctions to a rapid close and licensing new entrants expeditiously is critical to wireless competition.”).

⁵ AirLink at 12-13.

⁶ Gulfstream at 6.

⁷ 47 U.S.C. § 309(j)(3)(A).

Commission should, as U.S. Intelco urges, “proceed with all due speed.”⁸ Like other commenters,⁹ U S WEST remains convinced that July 1996 remains a realistic date to commence the remaining auctions.¹⁰

II. Special Preferences Should Not be Extended to the D and E Block Auctions

The Commission has reserved exclusively for entrepreneurs and small businesses 48% of all broadband PCS licenses, which encompass one-third of all licensed broadband PCS spectrum and one-third of all available pops.¹¹ Nevertheless, many small businesses now complain that the Commission has not done enough for them and that, as a result, it should extend to the D and E blocks the bidding credits and installment payment plans available in the F block — if not set aside these blocks for small businesses as well.¹²

⁸ U.S. Intelco at 2.

⁹ See, e.g., Phoenix at 4.

¹⁰ A small minority of F block-eligible commenters urges the FCC to defer commencement of the F block auction to give them additional time to attract investors or acquire financing. See, e.g., National Telecom PCS at 6 (no earlier than 120 days after close of C auction). If the FCC decides to grant this request, it should nonetheless proceed expeditiously with the D and E block auction. Small businesses which have wisely used this time to acquire needed financing could still participate in the D and E auction, and inexperienced bidders could use the information gleaned from the D and E auction in refining their business plans and in developing their bidding strategy for the F block auction. On the other hand, if the FCC denies this deferral request and decides to hold one simultaneous auction, it should, as PCIA recommends, be prepared to separate the auction if litigation threatens to derail one of the 10 MHz auctions. See PCIA at 15.

¹¹ The FCC has also adopted small business preferences for the 25 MHz comprising the General Wireless Communications Services. See GWCS Second Report and Order, 11 FCC Rcd 624 (1995).

¹² The experience in the C block auction confirms that there is little practical difference between an exclusive set-aside and the discriminatory extension of bidding credits and installment payment plans — given that over 99% of C block applicants claimed small business status. As a practical matter, therefore, the C block auction was, in reality, a set-aside for small business.

Congress did, indeed, establish as one objective of any auction the goal of “disseminating licenses among a wide variety of applicants, including small businesses.”¹³ Congress did not say, however, that licenses in a capital-intensive industry should be awarded predominately to small businesses.¹⁴ And of critical significance, the dissemination objective is only one of several objectives Congress articulated. Other, equally important objectives are the “rapid deployment of new technologies, products, and services for the benefit of the public” and the “efficient and intensive use of the electromagnetic spectrum,” which is widely understood to mean that licenses should be awarded to the entities valuing them the most.¹⁵

U S WEST documented in its comments that the extension of F block preferences to the D and E blocks would almost certainly preclude the D and E licenses from being assigned to the firms placing the highest value on their use and to the firms best positioned to provide service to the public.¹⁶ U S WEST showed that the availability of bidding credits and installment payments will skew the auction results and almost guarantee that many licenses will be awarded to the highest-risk ventures least capable of building a system and providing service.

¹³ 47 U.S.C. § 309(j)(3)(B).

¹⁴ It bears emphasis that “small” businesses tend to be privately held, with profits (or government benefits) disbursed to a handful of principals rather than to the public. “Large” businesses, in contrast, tend to be widely held by the public. Stock in U S WEST, for example, is held by more than one million shareowners, with profits either disbursed to these shareholders or reinvested on their behalf. It cannot be said, therefore, that “small” businesses are inherently better than “large” businesses.

¹⁵ See 47 U.S.C. § 309(j)(3)(A) and (D).

¹⁶ See U S WEST Comments at 1-5 and U S WEST Attachment A (economic paper by Professor Harris).

The Commission has previously determined that the “record does not support” extending C and F block preferences to other broadband PCS auctions.¹⁷ The experience with the current C block auction confirms that, whatever the merits of using bidding credits and installment payment plans in the F block auction, such preferences should not be extended to the D and E block auction.

It bears repeating that the overriding purpose of this proceeding is neither to raise revenues for the federal treasury nor to award licenses to small businesses. Rather, the “primary” purpose of this proceeding “is to create competition”:

By creating competition, we will increase the quality and the range of services available, and we will lower prices to consumers. What matters is whether we award licenses efficiently and quickly to those who value them most highly and who will compete most aggressively. If we succeed in this goal, we will create the greatest number of new jobs and stimulate new capital investment . .

¹⁸
..

This objective will best be realized if C and F block preferences are not extended to the D and E block auction, thus ensuring that the licenses are indeed awarded to those who value the spectrum the most.

III. Eliminating the Restrictions on Disaggregation and Partitioning Would Provide Meaningful Relief to Small Businesses

U S WEST believes there is more the Commission can do for small businesses than establish license set-asides and special government-funded preferences — specifi-

¹⁷ See Fifth PCS Memorandum Opinion and Order, 10 FCC Rcd 403, 414 at ¶ 15 (1994).

¹⁸ Statement of Chairman Reed Hundt, 1994 FCC LEXIS 5990 (Dec. 1, 1994).

cally, eliminate existing restrictions on spectrum disaggregation and geographic partitioning. In fact, U S WEST believes that elimination of such restrictions would do more in assisting truly small businesses to enter the CMRS market than would preferences, especially since preferences are inevitably bid away.

The Commission has already determined that disaggregation and partitioning serve the public interest by among other things, encouraging use of spectrum-conserving technologies, promoting innovation, and facilitating the provision of new services in underserved areas.¹⁹ The Commission has also noted, correctly, that disaggregation and partitioning can offer “substantial opportunities for small businesses, including those owned by women and minorities.”²⁰

Small businesses can be innovative. They often also know very well their community and their neighbors’ needs. The problem small businesses face is that the capital requirements to enter the CMRS market, even with the smallest 10 MHz BTA license, are huge given their size. Not only must small businesses pay large sums to acquire the license, but they must also pay additional large sums to remove microwave licensees and to build a system — all before receiving a single penny in revenue.²¹ This capital prob-

¹⁹ See, e.g., MDS Report and Order, 10 FCC Rcd 9589, 9614-15 at ¶ 47 (1995).

²⁰ GWCS Second Report and Order, 11 FCC Rcd 624, 660 at ¶ 91 (1995). See also id. 665 ¶ 105 (1995) (“[P]artitioning may help provide additional opportunities for small businesses to participate in providing GWCS-based services to customers.”); MDS Report and Order, 10 FCC Rcd 9589, 9604 at ¶ 24, 9615 at ¶ 47 (1995) (Partitioning “will permit broad participation from entities of all sizes” and will “encourage participation by a wide variety of entities, includes small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”).

²¹ As some commenters note, there is an inherent tension in the concept of awarding broadband PCS licenses to small businesses. A small business spending millions (or billions) of dollars for licenses and then

lem can be minimized considerably if small businesses could acquire smaller slices of spectrum — whether smaller in the size of the spectrum band or of the geographic serving area.

Permitting disaggregation and partitioning would create a “win-win” situation for all involved. A licensee can generate revenue from spectrum it does not need or intend to use, revenue which may prove invaluable in meeting other needs (*e.g.*, system build-out). The transferee would enjoy business opportunities not otherwise available. However, the true beneficiary would be the public, which will enjoy services and choices not previously available or planned.

As AT&T notes, the rationale for the current restrictions on disaggregation and partitioning are no longer valid.²² The Commission imposed a five-year ban on disaggregation because of a fear that valuable 30 MHz licenses might be split to reduce the number of meaningful competitors to cellular carriers.²³ However, there is little likelihood that this will occur given the results of the 30 MHz auctions.²⁴ Indeed, given the amounts

spending additional millions (or billions) to build a system is no longer a small business — at least as that term is customarily understood.

²² See AT&T at 11-12.

²³ PCS Memorandum Opinion and Order, 9 FCC Rcd 4957, 4985 at ¶ 69 (1994).

²⁴ Two of the three largest bidders in the A and B block auctions were cellular carriers, or consortia of cellular carriers, filling in holes in their CMRS coverage areas. The largest A and B block winner is an IXC/cable TV consortium which obviously has business plans to compete against both the incumbent LEC and the incumbent cellular carrier. None of these licensees has any incentive to disaggregate their spectrum blocks in a way to make it more difficult to compete against the incumbents.

paid for broadband PCS spectrum, it is clear that no licensee will transfer any of its spectrum unless it does not need it to compete effectively in the market.²⁵

Likewise, the Commission currently permits geographic partitioning of broadband PCS spectrum, but only if the transferee is a rural telephone company. However, given that all six PCS licensees can generally meet their construction requirements without serving rural areas, and given that there is only one telephone company in any one rural area, consumers in many rural areas will not receive the benefits of increased competition unless the Commission permits partitioning to any entity — as it has done in other areas.²⁶ If “partitioning is an efficient method of getting a license in the hands of an entity that will provide rapid service to rural areas,”²⁷ then partitioning should be permitted regardless of whether the transferee is a landline telephone company.

The public benefits of disaggregation and partitioning will accrue regardless of the size of the transferee. Consequently, although small businesses may be the most likely candidates for disaggregated or partitioned licenses, the Commission should not arbitrarily limit disaggregation and partitioning relief to small businesses.

²⁵ Moreover, since the FCC imposed its five-year ban on disaggregation, CMRS providers have begun to deploy digital air interfaces which are capable of serving far more customers compared to analog systems like AMPS. With technologies like CDMA, a licensee may not need the entire 30 MHz to compete effectively in the CMRS market.

²⁶ MDS Report and Order, 10 FCC Rcd 9589, 9666 at ¶ 180 (1995), *on recon.*, 10 FCC Rcd 13821, 13833 at ¶¶ 69-70 (1995). The FCC is also considering liberalization or elimination of the disaggregation and partitioning restrictions in other proceedings. *See, e.g., Competitive Bidding - 220 MHz Service*, 11 FCC Rcd 188, 274 ¶ 177 (1995); Development of 800 MHz SMR Systems, FCC 95-501, at 264-65 ¶¶ 266-68 (Dec. 15, 1995)(Second Further Notice of Proposed Rulemaking); Competitive Bidding - Paging, FCC 96-52, at 64 ¶ 138 (Feb. 9, 1996)(Notice of Proposed Rulemaking).

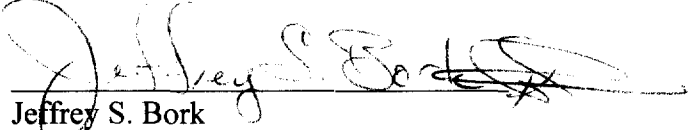
²⁷ Fifth PCS Report and Order, 9 FCC Rcd 5532, 5599 at ¶ 152 (1994).

IV. Conclusion

For the foregoing reasons and those set forth in U S WEST's comments, the Commission should commence at least the D and E block auctions (and, preferably, the F block auction as well) in July, and it should not extend to the D and E auction any special preferences. The Commission should also eliminate all restrictions on disaggregation and partitioning.

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U S WEST, Inc.

A handwritten signature in dark ink, appearing to read "Jeffrey S. Bork", is written over a horizontal line.

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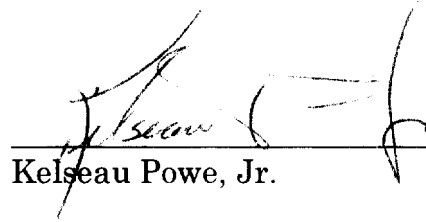
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April 25, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr. do hereby certify that on this 25th day of April, 1996, I have caused a copy of the foregoing **U S WEST REPLY COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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